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Planning Commission Date: January 11, 2006

Item No.

MILPITAS PLANNING COMMISSION AGENDA REPORT

Category: Public Hearing

Report prepared by: Cindy Maxwell

Public Hearing: Yes: X No:

Notices Mailed On: by 12/30/05

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Posted On: by 12/30/05

TITLE: USE PERMIT APPROVAL NO. UP2005-23

Proposal: Request to sell herbal supplements with alcoholic content (herbal wine).

Location: 16 Corning Avenue, Suite 168 (APN: 086-10-020)

RECOMMENDATION: Approval with Conditions

Applicant: Jean M. Delavega, 16 Corning Avenue, Suite 168, Milpitas, CA 95035

Property Owners: Vince Songcayawon, Golden Hills Investment II, LLC, 2690 S. White Rd., Suite 100, San Jose, CA 95148

Previous Action(s): 'S' Zone Approval for 16 Corning Avenue

Environmental Info: Exempt pursuant to Section 15301, Class 1, Existing Facilities

General Plan Designation: Mixed Use

Present Zoning: Mixed Use with 'S' Zone combining (MXD-S)

Existing Land Use: Multi-Tenant Commercial Building

Agenda Sent To: Applicant & owner

Attachments: Letter of Explanation, Location Map, Floor Plan, product photo & ingredient list.

PJ No. 2442

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BACKGROUND

Site Description

- Located on the southwest corner of S. Main St. and Corning Ave.
- Existing multi-tenant two-story commercial building built prior to 1965.
- Current tenants include a music store, veterinary clinic, gift shop, and offices.

THE APPLICATION

Request: Approval to sell an herbal wine in addition to an assortment of other herbal products.

Legal Authority: Title XI, Chapter 10, Section 38.03-1(n) (Conditional Use Permit for Liquor Stores) of the Milpitas Zoning Ordinance.

Project Description

The applicant proposes to sell an herbal wine called “Nature Herbs Tonic Drink” with 9.7% alcohol content. The wine would be one product in a wide assortment of other non-alcoholic herbal merchandise sold primarily through the internet at the site. Customers would also be able to drop-in the store to purchase the herbal wine.

Conformance

General Plan:

- General Plan Policy 2.a-I-5 - “...promote a strong economy which provides economic opportunities for all Milpitas residents...”
- General Plan Policy 2.a-I-6 - “...maintain a balanced economic base...”

Midtown Specific Plan:

- Goal 1: Encourage a compatible mixture of residential, retail, office, service-oriented commercial and industrial uses within the Midtown area.
- Mixed-Use Policy 3.11 (portion): “Encourage vertical as well as horizontal mixing of uses along Main Street.”

Zoning Ordinance:

- Milpitas Municipal Code IX-38.03-1(n), requiring a Use Permit for “Liquor stores”.
- “MXD” Mixed Use District purpose and intent “...to encourage a compatible mix of residential, retail, entertainment, office and commercial services uses within the framework of a pedestrian-oriented streetscape.”

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ISSUES

Liquor Sales

Because the proposed use falls under the much broader description of "Liquor Store" in the Zoning Ordinance, there may be concerns about the Use Permit's potential impact on neighboring uses. A sensitive land use, a childcare facility, is adjacent to the west side of the site. To address concerns that the business might eventually evolve into a liquor store, a special condition is recommended to limit alcoholic beverage sales to herbal wine sales only when offered as part of a business whose primary purpose is to market herbal products. The special condition also limits sales to daytime hours.

Potential Impacts to surrounding uses

Few customers will frequent the store because it is used primarily for internet orders. The office will also be used as a show room for distributors and the public. It is not expected to create any adverse impacts to surrounding land uses, in terms of traffic, parking, noise, or odors.

ENVIRONMENTAL REVIEW

This project is exempt from environmental review pursuant to Class 1, Section 15301 for "Existing Facilities" of the California Environmental Quality Act (CEQA) Guidelines.

RECOMMENDATION

Close the Public Hearing. Approve Use Permit No. UP2005-23 subject to the Findings and Special Conditions listed below.

FINDINGS

1. The proposed project complies with the City's General Plan in terms of Policy 2.a-I-5 to "...promote a strong economy which provides economic opportunities for all Milpitas residents..." and Policy 2.a-I-6 to "...maintain a balanced economic base..."
2. The proposed project complies with the City's Zoning Ordinance, requiring approval of a Use Permit for "liquor stores" in the Mixed Used zoning district. In addition, the proposed use will not be detrimental to the general welfare of surrounding uses and the community.
3. The proposed project is categorically exempt from further environmental review pursuant to Class 1, Section 15301 for "Existing Facilities" of the California Environmental Quality Act (CEQA) Guidelines.

SPECIAL CONDITIONS

1. This approval is for Use Permit No. UP2005-23 to sell an herbal supplement with alcoholic content at 16 Corning Avenue, Suite 168. The approval limits the sale of alcoholic beverages

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to products with alcoholic content to only herbal wines with maximum alcoholic content of 9.7% when distributed in conjunction with the operation of a store operated primarily to market herbal supplements and only when sales occur during daytime hours. Any modifications to the Use Permit require an amendment to this application. (P)

2. This use shall be conducted in compliance with all appropriate federal, state and local laws and regulations. (P)

Planning Division = (P)

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November 16, 2005

City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035

Letter of Explanation Regarding Proposal

To Whom It May Concern:

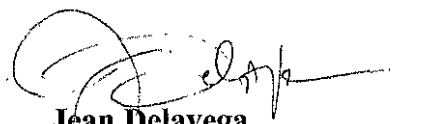
We are **Classique Herbs International Corporation**, a company in the Philippines dealing with herbal products. We have several distribution branches in major areas in the Philippines and overseas in Macao, Hong Kong, and United States.

We wish to import herbal wine, named **Nature Herbs Tonic Drink**, manufactured by Empower Manufacturing Company in the Philippines. This product will be added to our herbal product line that is currently being sold all over the world. See enclosed brochures for our product information.

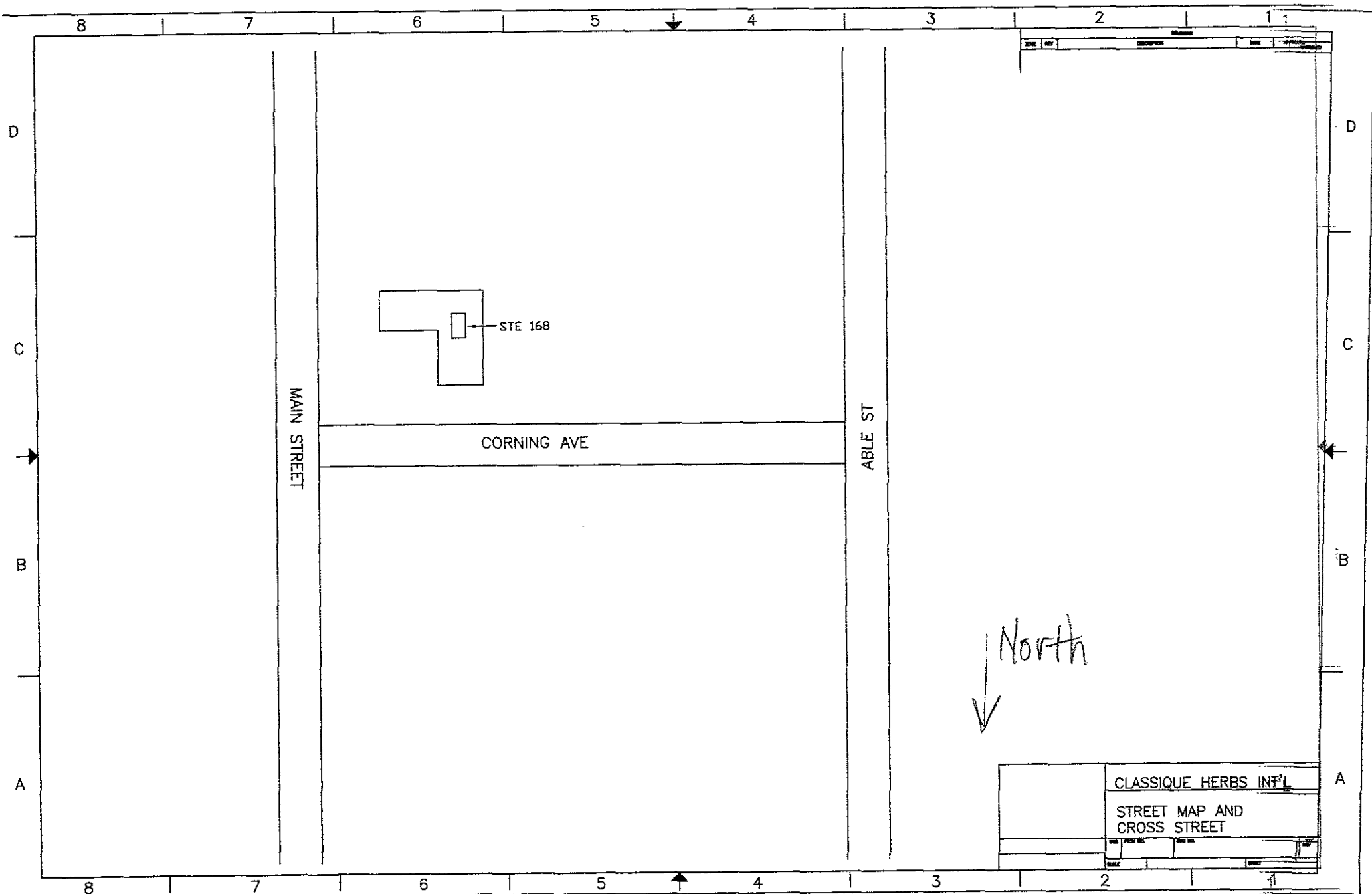
Our office, located at 16 Corning Ave., Milpitas, will be used mainly to handle Internet orders, as a show room and for product storage. The office will be open Monday through Friday during regular business hours for our distributors and the public, should they wish to purchase our products. Saturday and Sunday will be open for appointments only.

Thank you for your prompt attention to our application for the Zoning and Conditional Use Permit. If you need additional information, we would be glad to furnish them to you.

Sincerely yours,



Jean Delavega
CFO / Secretary



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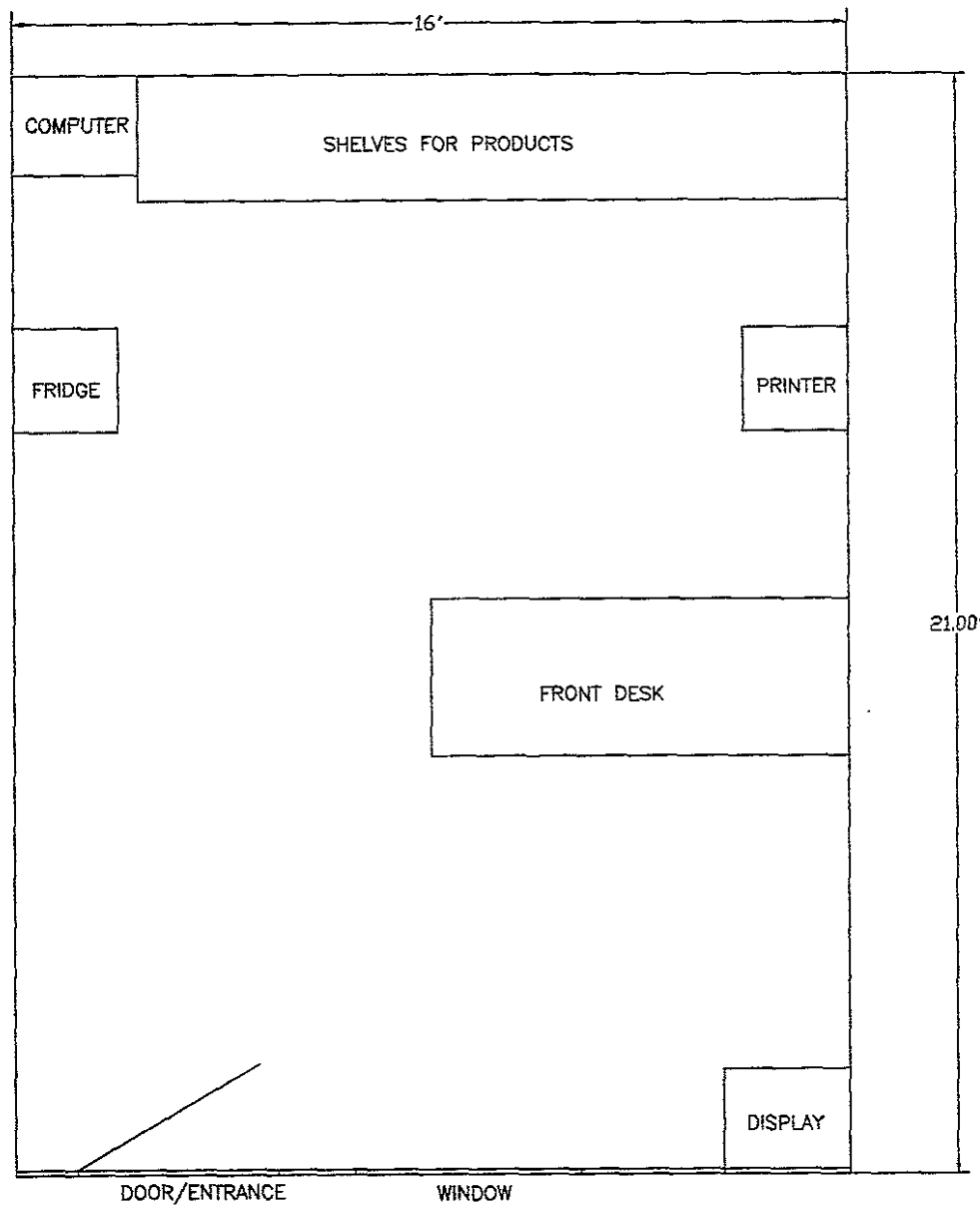
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| REVISIONS | | | | |
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| ZONE | REV | DESCRIPTION | DATE | APPROVED |
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| CLASSIQUE HERBS INT'L CORP | | | |
| FLOOR PLAN | | | |
| SIZE | FROM NO. | DWG NO. | REV |
| | | | |
| SCALE | | | SHEET |